IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 2050 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SUNIL PANDEY SALES OFFICER, &5 - Petitioner(s)

Versus

STATE OF GUJARAT &2 - Respondent(s)

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Appearance :

MR AR GUPTA for Petitioner No(s).: 1,2,3,4,5.

PUBLIC PROSECUTOR for Respondent No(s).: 1.
MR YATIN SONI for Respondent No(s).: 2.

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CORAM :HON'BLE MR.JUSTICE JAYANT PATEL

Date : 21/06/2005

ORAL JUDGMENT

1. Rule. Mr.Kogje, Ld.APP waives service of rule for respondent No.1 and Mr.Soni waives service of rule for respondent No.2. With the consent of the parties matter is taken up for final hearing today.

2. Upon hearing the learned advocates for the parties, it appears that as per the petitioner in view of the complaint under section 138 of Negotiable Instruments Act filed by the petitioner for dishonouring of cheque, as a counter blast, present complaint is filed by the respondent No.2 vide FIR No.619/02 with the Jamnagar Police Station for forgery of cheques and cheating. It is the case of the original complainant that the dates of the cheques are tampered and therefore the complaint is filed. As such, when the complaint is at the investigation stage, it will have to be investigated by the police as to whether the complaint is genuine or is false with a view to implicate the petitioner in view of dishonouring of cheque and initiation of prosecution.

3. Mr.Gupta, Ld.advocate for the petitioner submitted that the application for anticipatory bail was earlier preferred by the petitioners and the anticipatory bail was granted to the petitioners. However, as the period has expired, the order granting anticipatory bail is no more in existence. He submitted that if ultimately it is found in the investigation that the complaint is bogus and, in the meantime, the arrest is effected, the petitioner would be put to a position which can not be compensated or the damage can not be set off and therefore he submitted that even if this court is not inclined to interfere at this stage and is inclined to allow the police to proceed with the investigation, some reasonable protection may be afforded to the petitioners in the event the petitioners are to be arrested by the police as an outcome of the investigation or otherwise.

4. Mr.Kogje, Ld.APP submitted that since the complaint is filed and is registered as FIR the police should be at liberty to proceed with the investigation. He states that in the event it is found by the investigating officer that the offence is committed, as alleged in the complaint, the intimation shall be given by the police officer for effecting arrest and at that stage the petitioners may be at liberty to proceed for bail or anticipatory bail, as the case may be.

5. Primafacie, it appears that the complaint is as a countrblast to the complaint filed by the petitioners under section 138 Negotiable Instruments Act. As per the petitioners, the dates on the cheques were altered by the complainant and the copy of the cheque which is produced in this petition shows, primafacie, the signature is of the petitioner. As per the petitioner even the handwriting expert has opined that the signature is of the same person who has signed the cheque. Further, the

bank has not returned the cheque on the ground that the initials for change of date differ with the specimen signature of the person concerned. It may be, that after the investigation, the police may find that the complaint is not genuine or otherwise. However, if the case is made out for commission of offence, the police may be required to take further action in accordance with law.

6. In view of the aforesaid peculiar circumstances that the genuineness of the complaint is in doubt, if the investigation is allowed to proceed further, and as declared by the Ld.APP in the event of police contemplating to arrest the accused, if intimation of ten days in advance is given, it would meet with the ends of justice.

7. Hence, subject to the aforesaid observations, the present petition is disposed of with the further observations that the investigation may proceed in accordance with law and if it is found by the police that the complaint filed is a bogus or false complaint, it would be open to the police to take appropriate action against the complainant and in the event it is found by the police in the investigation that a case is made out for commission of offence, before arresting the petitioners, intimation of ten days in advance shall be given to all the concerned persons and in that event it would be open to the person concerned to move the appropriate court for anticipatory bail or bail, as the case may be.

It is needless to state that if such an application for anticipatory bail or bail is moved, the concerned court shall examine the matter independently on its merits.

8. The petition is disposed of accordingly. Rule is partly made absolute.

(**JAYANT PATEL,J**)

21.6.05/**murty**-